

HB6087



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6087

Introduced 2/11/2010, by Rep. Michael J. Zalewski

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-130

Amends the Juvenile Court Act of 1987. Provides that a minor may knowingly waive, in writing, with advice of counsel, his or her opportunity to be adjudicated under the Act and may consent to be sentenced under the Unified Code of Corrections. Effective immediately.

LRB096 18346 RLC 33723 b

A BILL FOR

1 AN ACT concerning courts.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Section 5-130 as follows:

6 (705 ILCS 405/5-130)

7 Sec. 5-130. Excluded jurisdiction.

8 (1) (a) The definition of delinquent minor under Section
9 5-120 of this Article shall not apply to any minor who at the
10 time of an offense was at least 15 years of age and who is
11 charged with: (i) first degree murder, (ii) aggravated criminal
12 sexual assault, (iii) aggravated battery with a firearm where
13 the minor personally discharged a firearm as defined in Section
14 2-15.5 of the Criminal Code of 1961, (iv) armed robbery when
15 the armed robbery was committed with a firearm, or (v)
16 aggravated vehicular hijacking when the hijacking was
17 committed with a firearm.

18 These charges and all other charges arising out of the same
19 incident shall be prosecuted under the criminal laws of this
20 State.

21 (b) (i) If before trial or plea an information or
22 indictment is filed that does not charge an offense specified
23 in paragraph (a) of this subsection (1) the State's Attorney

1 may proceed on any lesser charge or charges, but only in
2 Juvenile Court under the provisions of this Article. The
3 State's Attorney may proceed under the Criminal Code of 1961 on
4 a lesser charge if before trial the minor defendant knowingly
5 and with advice of counsel waives, in writing, his or her right
6 to have the matter proceed in Juvenile Court.

7 (ii) If before trial or plea an information or indictment
8 is filed that includes one or more charges specified in
9 paragraph (a) of this subsection (1) and additional charges
10 that are not specified in that paragraph, all of the charges
11 arising out of the same incident shall be prosecuted under the
12 Criminal Code of 1961.

13 (c) (i) If after trial or plea the minor is convicted of
14 any offense covered by paragraph (a) of this subsection (1),
15 then, in sentencing the minor, the court shall have available
16 any or all dispositions prescribed for that offense under
17 Chapter V of the Unified Code of Corrections.

18 (ii) If after trial or plea the court finds that the minor
19 committed an offense not covered by paragraph (a) of this
20 subsection (1), that finding shall not invalidate the verdict
21 or the prosecution of the minor under the criminal laws of the
22 State; however, unless the State requests a hearing for the
23 purpose of sentencing the minor under Chapter V of the Unified
24 Code of Corrections or the minor knowingly and with advice of
25 counsel waives, in writing, his or her opportunity to proceed
26 under Sections 5-705 and 5-710 of this Article and consents to

1 be sentenced under Chapter V of the Unified Code of
2 Corrections, the Court must proceed under Sections 5-705 and
3 5-710 of this Article. To request a hearing, the State must
4 file a written motion within 10 days following the filing of a
5 presentence report prepared pursuant to Section 5-3-2 of the
6 Unified Code of Corrections ~~entry of a finding or the return~~
7 ~~of a verdict~~. Reasonable notice of the motion shall be given to
8 the minor or his or her counsel. If the motion is made by the
9 State, the court shall conduct a hearing to determine if the
10 minor should be sentenced under Chapter V of the Unified Code
11 of Corrections. In making its determination, the court shall
12 consider among other matters: (a) whether there is evidence
13 that the offense was committed in an aggressive and
14 premeditated manner; (b) the age of the minor; (c) the previous
15 history of the minor; (d) whether there are facilities
16 particularly available to the Juvenile Court or the Department
17 of Juvenile Justice for the treatment and rehabilitation of the
18 minor; (e) whether the security of the public requires
19 sentencing under Chapter V of the Unified Code of Corrections;
20 and (f) whether the minor possessed a deadly weapon when
21 committing the offense. The rules of evidence shall be the same
22 as if at trial. If after the hearing the court finds that the
23 minor should be sentenced under Chapter V of the Unified Code
24 of Corrections, then the court shall sentence the minor
25 accordingly having available to it any or all dispositions so
26 prescribed.

1 (2) (Blank).

2 (3) (a) The definition of delinquent minor under Section
3 5-120 of this Article shall not apply to any minor who at the
4 time of the offense was at least 15 years of age and who is
5 charged with a violation of the provisions of paragraph (1),
6 (3), (4), or (10) of subsection (a) of Section 24-1 of the
7 Criminal Code of 1961 while in school, regardless of the time
8 of day or the time of year, or on the real property comprising
9 any school, regardless of the time of day or the time of year.
10 School is defined, for purposes of this Section as any public
11 or private elementary or secondary school, community college,
12 college, or university. These charges and all other charges
13 arising out of the same incident shall be prosecuted under the
14 criminal laws of this State.

15 (b) (i) If before trial or plea an information or
16 indictment is filed that does not charge an offense specified
17 in paragraph (a) of this subsection (3) the State's Attorney
18 may proceed on any lesser charge or charges, but only in
19 Juvenile Court under the provisions of this Article. The
20 State's Attorney may proceed under the criminal laws of this
21 State on a lesser charge if before trial the minor defendant
22 knowingly and with advice of counsel waives, in writing, his or
23 her right to have the matter proceed in Juvenile Court.

24 (ii) If before trial or plea an information or indictment
25 is filed that includes one or more charges specified in
26 paragraph (a) of this subsection (3) and additional charges

1 that are not specified in that paragraph, all of the charges
2 arising out of the same incident shall be prosecuted under the
3 criminal laws of this State.

4 (c) (i) If after trial or plea the minor is convicted of
5 any offense covered by paragraph (a) of this subsection (3),
6 then, in sentencing the minor, the court shall have available
7 any or all dispositions prescribed for that offense under
8 Chapter V of the Unified Code of Corrections.

9 (ii) If after trial or plea the court finds that the minor
10 committed an offense not covered by paragraph (a) of this
11 subsection (3), that finding shall not invalidate the verdict
12 or the prosecution of the minor under the criminal laws of the
13 State; however, unless the State requests a hearing for the
14 purpose of sentencing the minor under Chapter V of the Unified
15 Code of Corrections or the minor knowingly and with advice of
16 counsel waives, in writing, his or her opportunity to proceed
17 under Sections 5-705 and 5-710 of this Article and consents to
18 be sentenced under Chapter V of the Unified Code of
19 Corrections, the Court must proceed under Sections 5-705 and
20 5-710 of this Article. To request a hearing, the State must
21 file a written motion within 10 days following the filing of a
22 presentence report prepared pursuant to Section 5-3-2 of the
23 Unified Code of Corrections ~~entry of a finding or the return of~~
24 ~~a verdict~~. Reasonable notice of the motion shall be given to
25 the minor or his or her counsel. If the motion is made by the
26 State, the court shall conduct a hearing to determine if the

1 minor should be sentenced under Chapter V of the Unified Code
2 of Corrections. In making its determination, the court shall
3 consider among other matters: (a) whether there is evidence
4 that the offense was committed in an aggressive and
5 premeditated manner; (b) the age of the minor; (c) the previous
6 history of the minor; (d) whether there are facilities
7 particularly available to the Juvenile Court or the Department
8 of Juvenile Justice for the treatment and rehabilitation of the
9 minor; (e) whether the security of the public requires
10 sentencing under Chapter V of the Unified Code of Corrections;
11 and (f) whether the minor possessed a deadly weapon when
12 committing the offense. The rules of evidence shall be the same
13 as if at trial. If after the hearing the court finds that the
14 minor should be sentenced under Chapter V of the Unified Code
15 of Corrections, then the court shall sentence the minor
16 accordingly having available to it any or all dispositions so
17 prescribed.

18 (4) (a) The definition of delinquent minor under Section
19 5-120 of this Article shall not apply to any minor who at the
20 time of an offense was at least 13 years of age and who is
21 charged with first degree murder committed during the course of
22 either aggravated criminal sexual assault, criminal sexual
23 assault, or aggravated kidnaping. However, this subsection (4)
24 does not include a minor charged with first degree murder based
25 exclusively upon the accountability provisions of the Criminal
26 Code of 1961.

1 (b) (i) If before trial or plea an information or
2 indictment is filed that does not charge first degree murder
3 committed during the course of aggravated criminal sexual
4 assault, criminal sexual assault, or aggravated kidnaping, the
5 State's Attorney may proceed on any lesser charge or charges,
6 but only in Juvenile Court under the provisions of this
7 Article. The State's Attorney may proceed under the criminal
8 laws of this State on a lesser charge if before trial the minor
9 defendant knowingly and with advice of counsel waives, in
10 writing, his or her right to have the matter proceed in
11 Juvenile Court.

12 (ii) If before trial or plea an information or indictment
13 is filed that includes first degree murder committed during the
14 course of aggravated criminal sexual assault, criminal sexual
15 assault, or aggravated kidnaping, and additional charges that
16 are not specified in paragraph (a) of this subsection, all of
17 the charges arising out of the same incident shall be
18 prosecuted under the criminal laws of this State.

19 (c) (i) If after trial or plea the minor is convicted of
20 first degree murder committed during the course of aggravated
21 criminal sexual assault, criminal sexual assault, or
22 aggravated kidnaping, in sentencing the minor, the court shall
23 have available any or all dispositions prescribed for that
24 offense under Chapter V of the Unified Code of Corrections.

25 (ii) If the minor was not yet 15 years of age at the time of
26 the offense, and if after trial or plea the court finds that

1 the minor committed an offense other than first degree murder
2 committed during the course of either aggravated criminal
3 sexual assault, criminal sexual assault, or aggravated
4 kidnapping, the finding shall not invalidate the verdict or the
5 prosecution of the minor under the criminal laws of the State;
6 however, unless the State requests a hearing for the purpose of
7 sentencing the minor under Chapter V of the Unified Code of
8 Corrections or the minor knowingly and with advice of counsel
9 waives, in writing, his or her opportunity to proceed under
10 Sections 5-705 and 5-710 of this Article and consents to be
11 sentenced under Chapter V of the Unified Code of Corrections,
12 the Court must proceed under Sections 5-705 and 5-710 of this
13 Article. To request a hearing, the State must file a written
14 motion within 10 days following the filing of a presentence
15 report prepared pursuant to Section 5-3-2 of the Unified Code
16 of Corrections ~~entry of a finding or the return of a verdict.~~
17 Reasonable notice of the motion shall be given to the minor or
18 his or her counsel. If the motion is made by the State, the
19 court shall conduct a hearing to determine whether the minor
20 should be sentenced under Chapter V of the Unified Code of
21 Corrections. In making its determination, the court shall
22 consider among other matters: (a) whether there is evidence
23 that the offense was committed in an aggressive and
24 premeditated manner; (b) the age of the minor; (c) the previous
25 delinquent history of the minor; (d) whether there are
26 facilities particularly available to the Juvenile Court or the

1 Department of Juvenile Justice for the treatment and
2 rehabilitation of the minor; (e) whether the best interest of
3 the minor and the security of the public require sentencing
4 under Chapter V of the Unified Code of Corrections; and (f)
5 whether the minor possessed a deadly weapon when committing the
6 offense. The rules of evidence shall be the same as if at
7 trial. If after the hearing the court finds that the minor
8 should be sentenced under Chapter V of the Unified Code of
9 Corrections, then the court shall sentence the minor
10 accordingly having available to it any or all dispositions so
11 prescribed.

12 (5) (a) The definition of delinquent minor under Section
13 5-120 of this Article shall not apply to any minor who is
14 charged with a violation of subsection (a) of Section 31-6 or
15 Section 32-10 of the Criminal Code of 1961 when the minor is
16 subject to prosecution under the criminal laws of this State as
17 a result of the application of the provisions of Section 5-125,
18 or subsection (1) or (2) of this Section. These charges and all
19 other charges arising out of the same incident shall be
20 prosecuted under the criminal laws of this State.

21 (b) (i) If before trial or plea an information or
22 indictment is filed that does not charge an offense specified
23 in paragraph (a) of this subsection (5), the State's Attorney
24 may proceed on any lesser charge or charges, but only in
25 Juvenile Court under the provisions of this Article. The
26 State's Attorney may proceed under the criminal laws of this

1 State on a lesser charge if before trial the minor defendant
2 knowingly and with advice of counsel waives, in writing, his or
3 her right to have the matter proceed in Juvenile Court.

4 (ii) If before trial or plea an information or indictment
5 is filed that includes one or more charges specified in
6 paragraph (a) of this subsection (5) and additional charges
7 that are not specified in that paragraph, all of the charges
8 arising out of the same incident shall be prosecuted under the
9 criminal laws of this State.

10 (c) (i) If after trial or plea the minor is convicted of
11 any offense covered by paragraph (a) of this subsection (5),
12 then, in sentencing the minor, the court shall have available
13 any or all dispositions prescribed for that offense under
14 Chapter V of the Unified Code of Corrections.

15 (ii) If after trial or plea the court finds that the minor
16 committed an offense not covered by paragraph (a) of this
17 subsection (5), the conviction shall not invalidate the verdict
18 or the prosecution of the minor under the criminal laws of this
19 State; however, unless the State requests a hearing for the
20 purpose of sentencing the minor under Chapter V of the Unified
21 Code of Corrections or the minor knowingly and with advice of
22 counsel waives, in writing, his or her opportunity to proceed
23 under Sections 5-705 and 5-710 of this Article and consents to
24 be sentenced under Chapter V of the Unified Code of
25 Corrections, the Court must proceed under Sections 5-705 and
26 5-710 of this Article. To request a hearing, the State must

1 file a written motion within 10 days following the filing of a
2 presentence report prepared pursuant to Section 5-3-2 of the
3 Unified Code of Corrections ~~entry of a finding or the return of~~
4 ~~a verdict~~. Reasonable notice of the motion shall be given to
5 the minor or his or her counsel. If the motion is made by the
6 State, the court shall conduct a hearing to determine if
7 whether the minor should be sentenced under Chapter V of the
8 Unified Code of Corrections. In making its determination, the
9 court shall consider among other matters: (a) whether there is
10 evidence that the offense was committed in an aggressive and
11 premeditated manner; (b) the age of the minor; (c) the previous
12 delinquent history of the minor; (d) whether there are
13 facilities particularly available to the Juvenile Court or the
14 Department of Juvenile Justice for the treatment and
15 rehabilitation of the minor; (e) whether the security of the
16 public requires sentencing under Chapter V of the Unified Code
17 of Corrections; and (f) whether the minor possessed a deadly
18 weapon when committing the offense. The rules of evidence shall
19 be the same as if at trial. If after the hearing the court
20 finds that the minor should be sentenced under Chapter V of the
21 Unified Code of Corrections, then the court shall sentence the
22 minor accordingly having available to it any or all
23 dispositions so prescribed.

24 (6) The definition of delinquent minor under Section 5-120
25 of this Article shall not apply to any minor who, pursuant to
26 subsection (1) or (3) or Section 5-805 or 5-810, has previously

1 been placed under the jurisdiction of the criminal court and
2 has been convicted of a crime under an adult criminal or penal
3 statute. Such a minor shall be subject to prosecution under the
4 criminal laws of this State.

5 (7) The procedures set out in this Article for the
6 investigation, arrest and prosecution of juvenile offenders
7 shall not apply to minors who are excluded from jurisdiction of
8 the Juvenile Court, except that minors under 17 years of age
9 shall be kept separate from confined adults.

10 (8) Nothing in this Act prohibits or limits the prosecution
11 of any minor for an offense committed on or after his or her
12 17th birthday even though he or she is at the time of the
13 offense a ward of the court.

14 (9) If an original petition for adjudication of wardship
15 alleges the commission by a minor 13 years of age or over of an
16 act that constitutes a crime under the laws of this State, the
17 minor, with the consent of his or her counsel, may, at any time
18 before commencement of the adjudicatory hearing, file with the
19 court a motion that criminal prosecution be ordered and that
20 the petition be dismissed insofar as the act or acts involved
21 in the criminal proceedings are concerned. If such a motion is
22 filed as herein provided, the court shall enter its order
23 accordingly.

24 (10) If, prior to August 12, 2005 (the effective date of
25 Public Act 94-574), a minor is charged with a violation of
26 Section 401 of the Illinois Controlled Substances Act under the

1 criminal laws of this State, other than a minor charged with a
2 Class X felony violation of the Illinois Controlled Substances
3 Act or the Methamphetamine Control and Community Protection
4 Act, any party including the minor or the court sua sponte may,
5 before trial, move for a hearing for the purpose of trying and
6 sentencing the minor as a delinquent minor. To request a
7 hearing, the party must file a motion prior to trial.
8 Reasonable notice of the motion shall be given to all parties.
9 On its own motion or upon the filing of a motion by one of the
10 parties including the minor, the court shall conduct a hearing
11 to determine whether the minor should be tried and sentenced as
12 a delinquent minor under this Article. In making its
13 determination, the court shall consider among other matters:

14 (a) The age of the minor;

15 (b) Any previous delinquent or criminal history of the
16 minor;

17 (c) Any previous abuse or neglect history of the minor;

18 (d) Any mental health or educational history of the minor,
19 or both; and

20 (e) Whether there is probable cause to support the charge,
21 whether the minor is charged through accountability, and
22 whether there is evidence the minor possessed a deadly weapon
23 or caused serious bodily harm during the offense.

24 Any material that is relevant and reliable shall be
25 admissible at the hearing. In all cases, the judge shall enter
26 an order permitting prosecution under the criminal laws of

1 Illinois unless the judge makes a finding based on a
2 preponderance of the evidence that the minor would be amenable
3 to the care, treatment, and training programs available through
4 the facilities of the juvenile court based on an evaluation of
5 the factors listed in this subsection (10).

6 (Source: P.A. 94-556, eff. 9-11-05; 94-574, eff. 8-12-05;
7 94-696, eff. 6-1-06.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.